

1 BILL NO. S-82-01- 37

2 SPECIAL ORDINANCE NO. S- 33-82

3 AN ORDINANCE approving an Agreement
4 between the City of Fort Wayne and
5 Norfolk and Western Railway Co., and
6 Wabash Railroad Co., regarding the main-
7 tinance, repair, renewal, relocation,
8 operation, and use of the existing
9 sanitary sewer located on railway property.

10 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT
11 WAYNE, INDIANA:

12 SECTION 1. That a certain Agreement dated October 1, 1981,
13 between the City of Fort Wayne, Indiana, by and through its
14 Mayor and the Board of Public Works, and Norfolk and Western
15 Railway Co., and Wabash Railroad Co., for:

16 maintenance, repair, renewal, relocation,
17 operation and use of the existing sanitary
18 sewer located on railway property,

19 at a total cost of \$16,780.00, all as more particularly set
20 forth in said Agreement which is on file in the office of the
21 Board of Public Works and is by reference incorporated herein
22 and made a part hereof, be and the same is in all things hereby
23 ratified, confirmed and approved.

24 SECTION 2. That this Ordinance shall be in full force and
25 effect from and after its passage and approval by the Mayor.

26 
27 COUNCILMAN

28 APPROVED AS TO FORM AND
29 LEGALITY JANUARY 22, 1982

30 
31 BRUCE O. BOXBERGER, CITY ATTORNEY
32

Read the first time in full and on motion by Burns, seconded by E. which, and duly adopted, read the second time by title and referred to the Committee City of Fort Wayne (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, 19____, the _____ day of _____, at _____ o'clock _____ M., E.S.T.

DATE: 1-26-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by Burns, seconded by Stier, and duly adopted, placed on its passage. PASSED (~~lost~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	<u>8</u>	<u>0</u>	_____	<u>1</u>	_____
BRADBURY	<u>X</u>	_____	_____	_____	_____
BURNS	<u>X</u>	_____	_____	_____	_____
EISBART	<u>X</u>	_____	_____	_____	_____
GiaQUINTA	<u>X</u>	_____	_____	_____	_____
NUCKOLS	_____	_____	_____	<u>X</u>	_____
SCHMIDT	<u>X</u>	_____	_____	_____	_____
SCHOMBURG	<u>X</u>	_____	_____	_____	_____
STIER	<u>X</u>	_____	_____	_____	_____
TALARICO	<u>X</u>	_____	_____	_____	_____

DATE: 2-9-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) NO. 33-82 on the 9th day of February, 1982.

ATTEST:

(SEAL)

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 10th day of February, 1982, at the hour of 11:30 o'clock A.M., E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 10th day of February 1982, at the hour of 2 o'clock P.M., E.S.T.

Win Moses, Jr.
WIN MOSES, JR. - MAYOR

BILL NO. S-82-01-37

REPORT OF THE COMMITTEE ON CITY UTILITIES

WE, YOUR COMMITTEE ON City Utilities TO WHOM WAS REFERRED AN
ORDINANCE approving an Agreement between the City of Fort Wayne and
Norfolk and Western Railway Co., and Wabash Railroad
Co., regarding the maintenance, repair, renewal, relocation,
operation, and use of the existing sanitary sewer located
on railway property

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE 82/1 PASS.

PAUL M. BURNS - CHAIRMAN *Paul M. Burns*

MARK E. GIAQUINTA - VICE CHAIRMAN *Mark E. GiaQuinta*

JAMES S. STIER *John*

JANET G. BRADBURY *Janet G. Bradbury*

ROY J. SCHOMBURG *Roy J. Schomburg*

CONCURRED IN
DATE 2-9-82 CHARLES W. WESTMAN, CITY CLERK

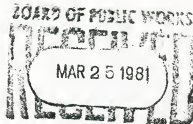
NW

Fort Wayne, Indiana

March 23, 1981

File: 371

The City of Fort Wayne, Indiana
City-County Building
One Main Street
Fort Wayne, Indiana 46802



Gentlemen:

Referring to various agreements between The City of Fort Wayne, Indiana and the Norfolk and Western Railway Company, covering several sanitary sewers near Fort Wayne.

Attached please find executed copy of agreement returned to you for your files.

Respectfully yours,

NORFOLK AND WESTERN RAILWAY COMPANY

W. C. Stevens, Jr.
W. C. Stevens, Jr.
Superintendent

skw

Attch.

10-203-3

6/3/81
(cancel)
6/23/81

Norfolk and Western Railway Company
Fort Wayne Division
Post Office Box 1215
Fort Wayne, Indiana 46801

W. C. Stevens, Jr.
Superintendent

THIS AGREEMENT, made in triplicate this 1st day of October 1981, between NORFOLK AND WESTERN RAILWAY COMPANY and WABASH RAILROAD COMPANY, hereinafter jointly and collectively called ("Licensor"), and the CITY OF FORT WAYNE, INDIANA, by and through its Mayor and Board of Public Works, hereinafter called the ("Licensee").

WITNESSETH: That,

Licensor, for and in the consideration of the sum of Sixteen Thousand Seven Hundred & Eighty Dollars (\$16,780.00) Lump sum payment, which the Licensee agrees to pay to the Treasurer of the Railway, and the covenants hereinafter stated which the said Licensee agrees to keep and perform, hereby licenses and permits, insofar as said Licensor has the right so to do, but without warranty and subject to all encumbrances, conditions, restrictions and easements to which Licensor's title to its property or rights of way ("premises") whether owned, controlled or leased is subject, the Licensee to maintain, repair, renew, relocate, operate and use at the sole cost and expense of the Licensee an existing 261.4 feet of 24 inch sanitary sewer tapping into a 24 inch sanitary sewer at its westerly terminus and 1569.6 feet of 48 inch sanitary sewer line, said pipes located along Railway's southerly right of way between mile post 368.40 and 368.11 and 839.6 feet of 8 inch sanitary sewer and 487.2 feet of 10 inch sanitary sewer located along Railway's southerly property and right of way between mile post 143.40 and 143.17, and 23.9 feet of 15 inch sanitary sewer crossing extension of Railway's southerly right of way opposite main track station stake 7530 + 42.8 within the confines of U.S. Route 30 and 24 with 314.5 feet of 18 inch sanitary sewer and onto Railway's southerly right of way between mile post 143.04 and 142.97 to a crossing of a 48 inch sanitary sewer under two tracks of the Railway located at mile post 142.97, and a 15 inch sanitary sewer crossing under two tracks of the Railway partly within the confines of Estella Avenue and partly across Railway's right of way at mile post 142.54, and a 15 inch sanitary sewer crossing of three tracks of the Railway within the confines of Estella Avenue at mile post 367.19 (EXISTING FACILITY) at Fort Wayne, Indiana.

The premises of the Licensor on which said EXISTING FACILITY is located as shown on Plan 81-A-289 dated October 16, 1979, attached hereto and incorporated herein, the EXISTING FACILITY shall be subject, however, to the following terms and conditions, all of which the Licensee covenants and agrees to keep, abide by and perform:

1. MAINTENANCE, REPAIR, RENEWAL, REMOVAL AND RELOCATION

EXISTING FACILITY shall be maintained, repaired, renewed, removed or relocated at such time or times, in such manner, with such material and under such general conditions as shall be satisfactory to Licensor, and such maintenance, repair, renewal, removal or relocation shall not interfere with the proper and safe use and operation of the premises or track thereon or business of Licensor. Licensee shall, after completing the maintenance, repair, renewal or removal of EXISTING FACILITY, restore the premises of Licensor to the same or as good condition as said premises were in prior to commencing such work.

EXISTING FACILITY shall comply at all times with the provisions of all applicable statutes and ordinances, and with all orders, rules or regulations, or any future modifications thereof, or any public authority having jurisdiction over the EXISTING FACILITY.

2. SOLE RISK AND EXPENSE

All of the acts to be performed by Licensee, Licensee's contractors, agents, or servants, in connection with the maintenance, repair, renewal, use or removal of EXISTING FACILITY, shall be performed at the sole risk and expense of Licensee, and Licensor shall be reimbursed for any and all costs and expenses incurred by it as the result of making any changes in its facilities or appurtenances necessitated by such acts.

Such costs shall include, but not be limited to, the costs of materials furnished, equipment and labor, which may be required during maintenance, repair, renewal, use or removal of EXISTING FACILITY, and Licensee hereby agrees to pay promptly unto Licensor such costs and expenses upon presentation of itemized vouchered bills therefor.

3. INDEMNIFICATION

Licensee shall and will at all times hereafter indemnify and save harmless Licenser, its officers, agents and employees from and against any and all detriment, liability, damages, losses, claims, demands, suits, costs, attorney's fees and expenses due to damage to property or injury to or death of persons, which the Licenser may suffer, sustain or be subject to, directly or indirectly, caused either wholly or in part by reason of the maintenance, repair, renewal, removal, operation, or use of EXISTING FACILITY as permitted by this license, except where such detriment, liability, damages, losses, claims, demands, suits, costs, attorney's fees and expenses are due to the sole negligence of Licenser.

4. CANCELLATION

This agreement shall continue in full force and effect unless terminated as hereafter provided:

- (a) This agreement shall be considered terminated should the Licensee abandon use of the premises for the herein stated purpose and in that event the full use of the premises shall revert to the Railway.
- (b) Subject to the terms of subsection (a) hereof, this agreement shall continue in effect as long as the Licensee shall faithfully and punctually keep and perform all and singular the covenants, agreements and undertakings herein by it agreed to be kept and performed, or until the Licensee shall have given to the Railway, sixty (60) days notice of its intention to terminate the same, and in that event the Licensee shall, within sixty (60) days after such notice has been given, remove its facilities from the property of the Railway, the provisions of this agreement to remain in full force and effect until such removal has been made, provided, however, that for any default on the part of the Licensee or its successors or assigns, the Railway shall have the right and option to terminate this agreement sixty (60) days after having given to the Licensee notice of its election to terminate this agreement, unless such default

shall have been corrected in said sixty (60) day period, and the waiver.

of any default of the Licensee shall not be construed or considered as the waiver of any other subsequent default. Every such notice shall be delivered to Licensee by United States Certified or Registered Mail addressed to the Board of Public Works, Licensee, Room 920, City-County Building, One Main Street, Fort Wayne, Indiana 46802.

5. CHANGES

It is understood and agreed by and between the parties hereto that if, at any time or times hereafter, Licensor shall be required by any duly constituted public authority to make any changes in its premises or the tracks, structures, roadbed or other installations located thereon in the vicinity of EXISTING FACILITY, or make any such changes in, to, upon, over or under the premises or the tracks, structures, roadbed or other installations located thereon, and crossed or in any way affected by EXISTING FACILITY then Licensee shall, at its own cost and expense, upon thirty (30) days notice in writing to that effect from Licensor, make such reasonable changes in the location of construction of EXISTING FACILITY as in the judgment of the Chief Engineer of Licensor and the City Engineer of Licensee, may be necessary to accommodate any future construction, improvements or changes of Licensor.

6. OTHER FACILITIES

It is agreed that no pipe or other structures will be placed under the tracks or upon the property of Licensor, except those herein mentioned and shown on the plan attached hereto, without the express written permission of Licensor.

7. INSURANCE

- *a) During any period of maintenance, repair, renewal, removal or relocation of EXISTING FACILITY, Licensee shall insure the obligations assumed in Article 3 in a manner and with a company satisfactory to Licensor and with limits of \$500,000 for injury to or death of one person and \$1,000,000 for injury to or death of two or more persons in any one accident and \$500,000 for damage to property. Licensee shall not occupy Licensor's property

until satisfactory proof of compliance with this provision shall have been furnished to and accepted by Licensor.

- (b) If an outside contractor is to repair, renew or remove said EXISTING FACILITY on Licensor's premises, then Licensee shall require said contractor to furnish Licensor with a Railroad Protective Liability Insurance Policy naming Licensor as the insured and issued to the contractor, with limits of \$500,000 for injury to or death of one person and \$1,000,000 for death of two or more persons in any one accident and \$500,000 for property damage. The contractor shall not occupy Licensor's premises until satisfactory proof of compliance with this provision shall have been furnished to and accepted by Licensor.

8. ASSIGNMENT

The covenants and agreements herein contained shall be binding upon, and shall inure to the benefit of the heirs, executors, administrators, lessees, successors and assigns of the parties hereto, respectively; provided, however, that no assignment of this license, or any rights thereunder, by Licensee shall be valid without the written consent of Licensor.

9. ECOLOGY

Licensee shall not create or permit to be created or to exist in or about EXISTING FACILITY any nuisance, public or private, during the continuance of this agreement, and Licensee hereby agrees to save and keep Licensor harmless from any suit or claim growing out of any nuisance arising from the presence, use or operation of EXISTING FACILITY or Licensee's violation of any applicable laws, ordinances or governmental regulations, including, without limitation, laws, ordinances and governmental regulations controlling air, water, noise, solid wastes and other pollution. Licensee shall install and bear the expense of any and all pollution control structures, devices or equipment which may be required during the term and continuance of this agreement under any applicable laws, ordinances or governmental regulations because of or arising from the use or operation of EXISTING FACILITY by Licensee or those claiming by, through or under Licensee.

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument,
in triplicate, as of the day and year first above written.

LICENSEE:
CITY OF FORT WAYNE, INDIANA

By 
WIN MOSES, JR., MAYOR

BOARD OF PUBLIC WORKS


MARK L. AKERS, CHAIRMAN


ROBERTA ANDERSON STATEN, MEMBER

ATTEST:


SANDRA E. KENNEDY, CLERK


HERBERT R. GAMACHE, MEMBER

LICENSOR:
NORFOLK AND WESTERN RAILWAY COMPANY

By 
~~VICE~~ VICE PRESIDENT - OPERATIONS



ATTEST:



SECRETARY

WABASH RAILROAD COMPANY

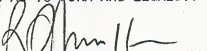
By 
VICE PRESIDENT



ATTEST:


Assistant Secretary
JOSEPH PAKUSH

APPROVED AS TO FORM AND LEGALITY


ASSOCIATE CITY ATTORNEY
CITY OF FORT WAYNE, INDIANA

48
TITLE OF ORDINANCE AGREEMENT BETWEEN THE CITY AND THE NORFOLK AND WESTERN RAILWAY CO.

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS S-82-01-37

SYNOPSIS OF ORDINANCE A LICENSE AGREEMENT BETWEEN THE CITY OF FORT WAYNE & NORFOLK AND WESTERN
RAILWAY CO. TO MAINTAIN, REPAIR, RENEW, RELOCATE, OPERATE AND USE FOR THE
LUMP SUM PAYMENT OF \$16,700 . AN EXISTING SANITARY SEWER LOCATED ON RAILWAY
PROPERTY .

EFFECT OF PASSAGE THE CITY WILL NOT HAVE TO PAY AN ANNUAL RENTAL FEE TO THE RAILWAY.

EFFECT OF NON-PASSAGE THE CITIES ANNUAL PAYMENTS WILL HAVE TO CONTINUE AT A COST OF \$1,220
PER YEAR.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) \$16,780.00 TO BE PAID FOR BY CITY
UTILITIES.

ASSIGNED TO COMMITTEE _____